

AMENDED IN ASSEMBLY AUGUST 8, 2012

AMENDED IN ASSEMBLY AUGUST 7, 2012

AMENDED IN ASSEMBLY JUNE 14, 2012

AMENDED IN SENATE MAY 25, 2012

AMENDED IN SENATE APRIL 11, 2012

**SENATE BILL**

**No. 1318**

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**Introduced by Senator Wolk  
(Coauthor: Senator Anderson)**

February 23, 2012

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An act to add ~~Sections 1228.3, 1228.5, and 1288.65~~ *Section 1228.5* to, and to repeal and add Section 1288.7 of, the Health and Safety Code, relating to infectious diseases.

LEGISLATIVE COUNSEL'S DIGEST

SB 1318, as amended, Wolk. Health facilities: influenza vaccinations.

Existing law imposes on the State Department of Public Health various duties and responsibilities regarding the regulation of clinics and health facilities, including general acute care hospitals, as defined.

Existing law requires a general acute care hospital to annually offer onsite influenza vaccinations, if available, to all hospital employees. Existing law requires a general acute care hospital to require its employees to be vaccinated, or if the employee elects not to be vaccinated, to declare in writing that he or she declined the vaccination. A violation of these provisions is punishable as a misdemeanor.

This bill would require licensed clinics and health facilities to institute measures, including aerosol transmissible diseases training, designed to maximize influenza vaccination rates and to prevent onsite health

care workers affiliated with the clinic or health facility and persons with privileges on the medical staff from contracting, and transmitting to patients, the influenza virus.

This bill would require each clinic and health facility to annually offer onsite influenza vaccinations to its employees and to require its onsite health care workers affiliated with the clinic or health facility, as defined, and persons with privileges on the medical staff, as defined, to be vaccinated. *This bill would require each clinic and health facility to annually record its vaccination rate, as defined, for each year and to make those records available online or upon request.* This bill would require licensed clinics and health facilities to maintain vaccination records of their employees and permit licensed clinics and health facilities to require documentation of vaccination or vaccination refusal from an onsite health care worker or person with privileges on the medical staff. By increasing the responsibilities of clinics and health facilities, *and adding instances where a clinic or health facility could be subject to a misdemeanor,* this bill would expand the definition of a crime and would impose a state-mandated local program.

This bill would also require each clinic and health facility to develop policies to implement these provisions and to ensure nonmedical staff, as defined, compliance with vaccination requirements. This bill would require the medical staff to develop separate policies to ensure compliance with vaccination requirements imposed by the clinic or health facility. This bill would require clinics and health facilities to report their percentage of employees and medical staff and of medical staff who have been vaccinated for that year to the State Department of Public Health. ~~This bill would provide that a clinic or health facility that reports, by January 1, 2015, a combined average of 90% or higher vaccination rate for its employees and medical staff shall not be subject to specified implementation and compliance requirements. This bill would require the department, by January 1, 2016, to develop a model mandatory vaccination policy, as specified, and would require clinics and health facilities which fail to reach the 90% compliance rate requirement to be subject to the model mandatory vaccination policy~~ *require, commencing January 1, 2015, each clinic and health facility to have a 90% or higher vaccination rate. The bill would require the department, by July 1, 2015, to develop a model mandatory vaccination policy, as specified, and for each year a clinic or health facility does not achieve the 90% or higher vaccination rate, would require the clinic*

*or health facility to adopt the model mandatory vaccination policy for the following flu season.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature declares that influenza can be a  
2     serious disease that can lead to hospitalization and even death, and  
3     that increased access to vaccinations is a critical component in the  
4     promotion of health and wellness. Because of their contact with  
5     patients, many health care workers are at risk for exposure to, and  
6     possible transmission of, vaccine-preventable diseases. By getting  
7     vaccinated, health care workers can protect themselves, their  
8     families, and patients from contracting the flu. It is the intent of  
9     the Legislature in enacting this statute to protect the health, safety,  
10    and welfare of health care workers and patients who enter a clinic  
11    or health care facility. It is also the intent of the Legislature that  
12    health care facilities and clinics institute measures designed to  
13    maximize influenza vaccination rates and increase vaccination  
14    among health care workers. It is also the intent of the Legislature  
15    that the State Department of Public Health develop a model  
16    mandatory vaccination policy through a stakeholder process to  
17    achieve a 90-percent influenza vaccination compliance rate  
18    requirement for health care workers.

19    ~~SEC. 2. Section 1228.3 is added to the Health and Safety Code,~~  
20    ~~to read:~~

21    ~~1228.3. (a) A licensed clinic shall institute measures designed~~  
22    ~~to maximize influenza vaccination rates and to prevent persons~~  
23    ~~with privileges on the medical staff and onsite health care workers~~  
24    ~~affiliated with the clinic from contracting, and transmitting to~~  
25    ~~patients, the influenza virus to patients. These measures shall~~  
26    ~~include, but not be limited to, aerosol transmissible diseases~~  
27    ~~training as described in Section 5199(i) of Title 8 of the California~~  
28    ~~Code of Regulations, as in effect on January 1, 2013.~~

~~(b) For purposes of this section, the following definitions shall apply:~~

~~(1) “Medical staff” shall have the same meaning provided in Section 1228.5.~~

~~(2) “Onsite health care worker affiliated with the clinic” shall have the same meaning provided in Section 1228.5.~~

~~(e) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this section by sending letters or similar instruction to all applicable facilities without taking regulatory action.~~

~~SEC. 3.~~

~~SEC. 2.~~ Section 1228.5 is added to the Health and Safety Code, to read:

1228.5. (a) *A licensed clinic shall institute measures designed to maximize influenza vaccination rates and to prevent persons with privileges on the medical staff and onsite health care workers affiliated with the clinic from contracting, and transmitting to patients, the influenza virus. These measures shall include, but not be limited to, aerosol transmissible diseases training as described in subdivision (i) of Section 5199 of Title 8 of the California Code of Regulations, as in effect on January 1, 2013.*

(b) A licensed clinic shall annually offer its employees onsite influenza vaccinations, if available, at no cost to the employee.

~~(b)~~

(c) A licensed clinic shall require all onsite health care workers affiliated with the clinic and persons with privileges on the medical staff to either annually receive an influenza vaccination or, as an alternative to the annual influenza vaccination if an onsite health care worker affiliated with the clinic or person with privileges on the medical staff elects not to be vaccinated, he or she shall agree, in writing, to adhere to the most effective measures determined by the clinic in preventing health care workers from contracting and transmitting the influenza virus.

(d) (1) *A clinic shall annually record its average vaccination compliance rate, as defined in paragraph (4) of subdivision (i), for that year, and make those records available online or upon request of a government agency, organization, or individual.*

(2) *The records described in paragraph (1) shall be maintained and made available during any inspection made by the department.*

1     (e) (1) Commencing January 1, 2015, a clinic shall have a  
2     90-percent or higher vaccination rate. For each year that a clinic  
3     does not achieve the 90-percent or higher vaccination rate, the  
4     clinic shall adopt for the following flu season, as defined by the  
5     State Health Officer, local health officer, or both, the model  
6     mandatory vaccination policy described in paragraph (2), to  
7     achieve the 90-percent or higher goal. The department may waive  
8     the 90-percent vaccination rate requirement for a clinic that is in  
9     substantial compliance.

10    (2) The department shall develop a model mandatory  
11    vaccination policy through a stakeholder process to be issued  
12    through an all facilities letter no later than July 1, 2015.

13    ~~(e)~~

14    (f) (1) In meeting the requirements of ~~subdivision (b)~~  
15    ~~subdivisions (c), (d), and (e)~~, the clinic shall maintain influenza  
16    vaccination records of employees and may maintain influenza  
17    vaccination records of the other onsite health care workers *who*  
18    *are* affiliated with, but ~~are not an employee~~ *employees* of, the  
19    clinic and of persons with privileges on the medical staff. If the  
20    clinic does not have records of an onsite health care worker or  
21    person with privileges on the medical staff being vaccinated onsite,  
22    the clinic may require the worker or medical staff person to either  
23    provide documentation of vaccination or documentation that he  
24    or she refused the vaccination.

25    (2) The clinic may include language in its business contracts to  
26    require a contract worker to maintain records of the verification  
27    of offsite vaccination or documentation that he or she refused the  
28    vaccination, which shall be available to the clinic upon request.  
29    Nothing in this section shall be construed to require a clinic to  
30    maintain separate vaccination records or to provide vaccinations  
31    at no cost to a contract worker who is not an employee of the clinic.

32    ~~(d)~~

33    (g) Each licensed clinic shall develop policies to implement this  
34    section and to ensure its onsite health care workers affiliated with  
35    the clinic are in compliance with the vaccination requirements  
36    imposed by this section. The medical staff shall also develop  
37    policies to ensure that persons who have privileges on the medical  
38    staff are in compliance with the vaccination requirements of this  
39    section that have been implemented by the clinic.

1     (h) *Subdivisions (f) and (g) shall not be applicable to a dialysis*  
2     *clinic which maintains an influenza immunization log for its*  
3     *patients, health care workers, and medical staff pursuant to an*  
4     *infection control program in compliance with the Medicare*  
5     *“Conditions for Coverage for End-State Renal Disease Facilities,”*  
6     *conditions that are promulgated by the Centers for Medicare and*  
7     *Medicaid Services, if the immunization log is available for review*  
8     *during routine department inspections or during an inspection in*  
9     *response to a complaint.*

10    ~~(e)~~

11    (i) For purposes of this section, the following definitions shall  
12    apply:

13    (1) “Employee” means an individual who works for the clinic,  
14    is listed on the clinic’s payroll records, and is under the clinic’s  
15    direction and control.

16    (2) “Medical staff” means professional medical personnel who  
17    are approved and given privileges to provide health care to patients  
18    while onsite in a clinic and who are responsible for the adequacy  
19    and quality of care rendered to patients. Medical staff includes,  
20    but is not limited to, physicians and surgeons, and, if dental or  
21    podiatric services are provided, dentists or podiatrists.

22    (3) “Onsite health care worker affiliated with the clinic” means  
23    a person who is either a volunteer or is employed by, paid by, or  
24    receives credit or any other form of compensation from the clinic,  
25    who performs some or all of his or her duties in a patient care area  
26    of the facility. The patient care area of the facility shall be  
27    determined by the clinic and is where onsite health care workers  
28    and medical staff are within close proximity to patients receiving  
29    care. An onsite health care worker affiliated with the clinic  
30    includes, but is not limited to, employees, physicians, nurses,  
31    nursing assistants, therapists, technicians, emergency medical  
32    service personnel, dental personnel, pharmacists, laboratory  
33    personnel, autopsy personnel, students and trainees, contractual  
34    staff, and registry staff who perform direct patient care duties but  
35    are not employed by the clinic.

36    (4) “Vaccination rate” means the percentage of a clinic’s onsite  
37    health care workers who are employees and persons with privileges  
38    on the medical staff who receive influenza vaccination during a  
39    specific year or influenza season.

40    ~~(f)~~

1 (j) Notwithstanding Chapter 3.5 (commencing with Section  
2 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
3 the department may implement this section by sending letters or  
4 similar instruction to all applicable facilities without taking  
5 regulatory action.

6 ~~(g) A clinic shall annually report its average vaccination~~  
7 ~~compliance rate for onsite health care workers who are employees~~  
8 ~~and of medical staff who have been vaccinated for that year to the~~  
9 ~~State Department of Public Health.~~

10 ~~(h) This section, with the exception of subdivision (a) and the~~  
11 ~~reporting requirement of subdivision (g), shall not apply to a clinic~~  
12 ~~that has a combined average vaccination compliance rate of 90~~  
13 ~~percent or higher, by January 1, 2015, for its onsite health care~~  
14 ~~workers who are employees and medical staff. For clinics that fail~~  
15 ~~to reach the 90-percent compliance rate requirement, the clinic~~  
16 ~~shall adopt the model mandatory vaccination policy as determined~~  
17 ~~by the State Department of Public Health to achieve the 90-percent~~  
18 ~~or higher goal. The department shall develop a model mandatory~~  
19 ~~vaccination policy through a stakeholder process to be issued~~  
20 ~~through an all facilities letter no later than January 1, 2016. The~~  
21 ~~department may waive the 90-percent compliance rate requirement~~  
22 ~~for a clinic that is in substantial compliance. Implementation of~~  
23 ~~this section shall be exempt from the Administrative Procedure~~  
24 ~~Act.~~

25 ~~(k) This section does not prevent a clinic or local jurisdiction~~  
26 ~~from instituting additional measures or policies to maximize~~  
27 ~~influenza vaccination rates and to prevent health care workers~~  
28 ~~affiliated with the clinic from contracting and transmitting the~~  
29 ~~influenza virus.~~

30 ~~(l) This section does not require the department to perform any~~  
31 ~~additional duties to ensure compliance that are separate from its~~  
32 ~~existing licensing survey activity or other statutory requirements.~~

33 ~~(m) Implementation of this section is exempt from the rulemaking~~  
34 ~~provisions of the Administrative Procedure Act (Chapter 3.5~~  
35 ~~commencing with Section 11340) of Part 1 of Division 3 of Title~~  
36 ~~2 of the Government Code).~~

37 ~~SEC. 4. Section 1288.65 is added to the Health and Safety~~  
38 ~~Code, to read:~~

39 ~~1288.65. (a) A licensed health facility shall institute measures~~  
40 ~~designed to maximize influenza vaccination rates and to prevent~~

1 persons with privileges on the medical staff and onsite health care  
2 workers affiliated with the health facility from contracting, and  
3 transmitting to patients, the influenza virus. These measures shall  
4 include, but not be limited to, aerosol transmissible diseases  
5 training, as described in Section 5199(i) of Title 8 of the California  
6 Code of Regulations, as in effect January 1, 2013.

7 (b) For purposes of this section, the following definitions shall  
8 apply:

9 (1) “Medical staff” means professional medical personnel who  
10 are approved and given privileges to provide health care to patients  
11 in a health facility and who are responsible for the adequacy and  
12 quality of care rendered to patients. Medical staff includes, but is  
13 not limited to, physicians and surgeons, and, if dental or podiatric  
14 services are provided, dentists or podiatrists.

15 (2) “Onsite health care worker affiliated with the health facility”  
16 means a person who is either a volunteer or is employed by, paid  
17 by, or receives credit or any other form of compensation from the  
18 health facility, who performs some or all of his or her duties in a  
19 patient care area of the facility. The patient care area of the facility  
20 shall be determined by the health facility and is where onsite health  
21 care workers and medical staff are within close proximity to  
22 patients receiving care. An onsite health care worker affiliated  
23 with the health facility includes, but is not limited to, employees,  
24 physicians, nurses, nursing assistants, therapists, technicians,  
25 emergency medical service personnel, dental personnel,  
26 pharmacists, laboratory personnel, autopsy personnel, students  
27 and trainees, contractual staff, and registry staff who perform direct  
28 patient care duties but are not employed by the health facility.

29 (e) Notwithstanding Chapter 3.5 (commencing with Section  
30 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
31 the department may implement this section by sending letters or  
32 similar instruction to all applicable facilities without taking  
33 regulatory action.

34 ~~SEC. 5.~~

35 *SEC. 3.* Section 1288.7 of the Health and Safety Code is  
36 repealed.

37 ~~SEC. 6.~~

38 *SEC. 4.* Section 1288.7 is added to the Health and Safety Code,  
39 to read:



1 1288.7. (a) *A licensed health facility shall institute measures*  
2 *designed to maximize influenza vaccination rates and to prevent*  
3 *persons with privileges on the medical staff and onsite health care*  
4 *workers affiliated with the health facility from contracting, and*  
5 *transmitting to patients, the influenza virus. These measures shall*  
6 *include, but not be limited to, aerosol transmissible diseases*  
7 *training as described in subdivision (i) of Section 5199 of Title 8*  
8 *of the California Code of Regulations, as in effect on January 1,*  
9 *2013.*

10 (b) *A licensed health facility shall annually offer its employees*  
11 *onsite influenza vaccinations, if available, at no cost to the*  
12 *employee.*

13 ~~(b)~~

14 (c) *A licensed health facility shall require all onsite health care*  
15 *workers affiliated with the health facility and persons with*  
16 *privileges on the medical staff to either annually receive an*  
17 *influenza vaccination or, as an alternative to the annual influenza*  
18 *vaccination if the onsite health care worker affiliated with the*  
19 *health facility or person with privileges on the medical staff elects*  
20 *not to be vaccinated, he or she shall agree, in writing, to adhere to*  
21 *the most effective measures determined by the health facility in*  
22 *preventing health care workers from contracting and transmitting*  
23 *the influenza virus.*

24 (d) (1) *A health facility shall annually record its vaccination*  
25 *rate, as defined in paragraph (4) of subdivision (i), for that year,*  
26 *and make those records available online or upon request of a*  
27 *government agency, organization, or individual.*

28 (2) *The records described in paragraph (1) shall be maintained*  
29 *and made available during any inspection made by the department.*

30 (e) (1) *Commencing January 1, 2015, a health facility shall*  
31 *have a 90-percent or higher vaccination rate. For each year that*  
32 *a health facility does not achieve the 90-percent or higher*  
33 *vaccination rate, the health facility shall adopt for the following*  
34 *flu season, as defined by the State Health Officer, local health*  
35 *officer, or both, the model mandatory vaccination policy described*  
36 *in paragraph (2), to achieve the 90-percent or higher goal. The*  
37 *department may waive the 90-percent vaccination rate requirement*  
38 *for a health facility that is in substantial compliance.*

1 (2) *The department shall develop a model mandatory*  
2 *vaccination policy through a stakeholder process to be issued*  
3 *through an all facilities letter no later than July 1, 2015.*

4 ~~(e)~~

5 (f) (1) In meeting the requirements of ~~subdivision (b)~~  
6 ~~subdivisions (c), (d), and (e)~~, the health facility shall maintain  
7 influenza vaccination records of employees and may maintain  
8 influenza vaccination records of the other onsite health care  
9 workers who are affiliated with, but are not employees of, the  
10 health facilities and of persons with privileges on the medical staff.  
11 If the health facility does not have records of an onsite health care  
12 worker or person with privileges on the medical staff being  
13 vaccinated, the health facility may require the worker or medical  
14 staff person to either provide documentation of vaccination or  
15 documentation that he or she refused the vaccination.

16 (2) The health facility may include language in its business  
17 contracts to require a contract worker to maintain records of the  
18 verification of offsite vaccination or documentation that he or she  
19 refused the vaccination, which shall be available to the health  
20 facility upon request. Nothing in this section shall be construed to  
21 require a health facility to maintain separate vaccination records  
22 or to provide vaccinations at no cost to a contract worker who is  
23 not an employee of the health facility.

24 ~~(d)~~

25 (g) Each licensed health facility shall develop policies to  
26 implement this section and to ensure its onsite health care workers  
27 affiliated with the health facility are in compliance with the  
28 vaccination requirements imposed by this section. The medical  
29 staff shall develop policies to ensure that persons who have  
30 privileges on the medical staff are in compliance with the  
31 vaccination requirements of this section that have been  
32 implemented by the health facility.

33 ~~(e)~~

34 (h) In addition to other requirements of this section, general  
35 acute care hospitals shall take all of the following actions:

36 (1) Institute respiratory hygiene and cough etiquette protocols,  
37 develop and implement procedures for the isolation of patients  
38 with influenza, and adopt a seasonal influenza plan.

39 (2) Revise an existing or develop a new disaster plan that  
40 includes a pandemic influenza component. The plan shall also

1 document any actual or recommended collaboration with local,  
2 regional, and state public health agencies or officials in the event  
3 of an influenza pandemic.

4 ~~(f)~~

5 (i) For purposes of this section, the following definitions shall  
6 apply:

7 (1) “Employee” means an individual who works for the health  
8 facility, is listed on the health facility’s payroll records, and is  
9 under the health facility’s direction and control.

10 (2) “Medical staff” means professional medical personnel who  
11 are approved and given privileges to provide health care to patients  
12 in a health facility and who are responsible for the adequacy and  
13 quality of care rendered to patients. Medical staff ~~include~~ *includes*,  
14 *but is not limited to*, physicians *and surgeons*, and, if dental or  
15 podiatric services are provided, dentists or podiatrists.

16 (3) “Onsite health care worker affiliated with the health facility”  
17 means a person who is either a volunteer or is employed by, paid  
18 by, or receives credit or any other form of compensation from the  
19 health facility, who performs some or all of his or her duties in a  
20 patient care area of the facility. The patient care area of the facility  
21 shall be determined by the health facility and is where onsite health  
22 care workers and medical staff are within close proximity to  
23 patients receiving care. An onsite health care worker affiliated  
24 with the health facility includes, but is not limited to, physicians,  
25 nurses, nursing assistants, therapists, technicians, emergency  
26 medical service personnel, dental personnel, pharmacists,  
27 laboratory personnel, autopsy personnel, students and trainees,  
28 contractual staff, and registry staff performing direct patient care  
29 duties but are not employed by the health facility.

30 (4) “*Vaccination rate*” means the percentage of a health  
31 facility’s onsite health care workers who are employees and  
32 persons with privileges on the medical staff who receive an  
33 influenza vaccination during a specific year or influenza season.

34 ~~(g)~~

35 (j) Notwithstanding Chapter 3.5 (commencing with Section  
36 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
37 the department may implement this section by sending letters or  
38 similar instruction to all applicable facilities without taking  
39 regulatory action.

1     ~~(h) A health facility shall annually report its average vaccination~~  
2     ~~compliance rate of onsite health care workers that are employees~~  
3     ~~and of medical staff who have been vaccinated for that year to the~~  
4     ~~State Department of Public Health.~~

5     ~~(i) This section, with the exception of subdivisions (a) and (e),~~  
6     ~~and the reporting requirement of subdivision (h), shall not apply~~  
7     ~~to health facilities that have a combined average vaccination~~  
8     ~~compliance rate of 90 percent or higher by January 1, 2015, for~~  
9     ~~its onsite health care workers that are employees and medical staff.~~  
10    ~~For health facilities that fail to reach the 90-percent compliance~~  
11    ~~rate requirement, the health facility shall adopt the model~~  
12    ~~mandatory vaccination policy as determined by the State~~  
13    ~~Department of Public Health to achieve the 90-percent or higher~~  
14    ~~goal. The department shall develop a model mandatory vaccination~~  
15    ~~policy through a stakeholder process to be issued through an all~~  
16    ~~facilities letter later no later than January 1, 2016. The department~~  
17    ~~may waive the 90-percent compliance rate requirement for a health~~  
18    ~~facility that is in substantial compliance. Implementation of this~~  
19    ~~section shall be exempt from the Administrative Procedure Act.~~

20    ~~(k) This section does not apply to correctional treatment centers~~  
21    ~~as defined in subdivision (j) of Section 1250.~~

22    ~~(l) This section does not prevent a health facility or local~~  
23    ~~jurisdiction from instituting additional measures or policies to~~  
24    ~~maximize influenza vaccination rates and to prevent health care~~  
25    ~~workers affiliated with the health facility from contracting and~~  
26    ~~transmitting the influenza virus.~~

27    ~~(m) This section does not require the department to perform~~  
28    ~~any additional duties to ensure compliance that are separate from~~  
29    ~~its existing licensing survey activity or other statutory~~  
30    ~~requirements.~~

31    ~~(n) Implementation of this section is exempt from the rulemaking~~  
32    ~~provisions of the Administrative Procedure Act (Chapter 3.5~~  
33    ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~  
34    ~~2 of the Government Code).~~

35    ~~SEC. 7.~~

36    ~~SEC. 5. No reimbursement is required by this act pursuant to~~  
37    ~~Section 6 of Article XIII B of the California Constitution because~~  
38    ~~the only costs that may be incurred by a local agency or school~~  
39    ~~district will be incurred because this act creates a new crime or~~  
40    ~~infraction, eliminates a crime or infraction, or changes the penalty~~

1 for a crime or infraction, within the meaning of Section 17556 of  
2 the Government Code, or changes the definition of a crime within  
3 the meaning of Section 6 of Article XIII B of the California  
4 Constitution.

O